

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARTY PAUL, an individual; and  
BRIAN BUSKIRK, an individual,

Plaintiffs,

v.

RBC CAPITAL MARKETS, LLC, a  
Minnesota limited liability company;  
ROYAL BANK OF CANADA, a  
Canadian corporation; and ROYAL  
BANK OF CANADA US WEALTH  
ACCUMULATION PLAN, an employee  
benefit plan,

Defendants.

No. 3:16-cv-05616-RBL

JOINT STATUS REPORT AND  
DISCOVERY PLAN

Pursuant to the Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. No. 3), plaintiffs Marty Paul (“Paul”) and Brian Buskirk (“Buskirk”) (Paul and Buskirk collectively, “Plaintiffs”) and defendants RBC Capital Markets, LLC (“RBC Capital Markets”), Royal Bank of Canada (“RBC”), and Royal Bank of Canada US Wealth Accumulation Plan (“the WAP”) (RBC Capital Markets, RBC, and the WAP collectively, “Defendants”) submit this Joint Status Report and Discovery Plan.



1                   **1. Statement of the Nature and Complexity of the Case**

2                   This case arises under the Employment Retirement Income Security Act (“ERISA”).  
3                   Plaintiffs assert claims against Defendants relating to the denial of benefits Plaintiffs allege  
4                   were due to them under the WAP. Those claims include:

- 5                   1. A claim for enforcement of rights and recovery of benefits due pursuant to  
6                   ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);  
7                   2. A claim for declaratory judgment to clarify Plaintiffs’ rights to benefits due  
8                   under the WAP pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);  
9                   3. A claim for breach of fiduciary duty pursuant to ERISA § 502(a)(2), 29 U.S.C. §  
10                  1132(a)(2); and  
11                  4. A claim to enjoin denial of full vesting pursuant to ERISA § 502(a)(3), 29  
12                  U.S.C. § 1132(a)(3).

13                  Defendants deny all claims.

14                   **2. Proposed Deadline for Joining Additional Parties**

15                  The Parties propose December 15, 2016, as the deadline to join additional parties.

16                   **3. Consent to Magistrate Judge**

17                  No.

18                   **4. Discovery Plan**

19                  **A. Initial Disclosures**

20                  The Parties exchanged initial disclosures on October 5, 2016, the date set forth in  
21                  the Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement.

22                  **B. Subjects, Timing and Potential Phasing of Discovery**

23                  Without waiver of additional topics of discovery, at this time Plaintiffs plan to take  
24                  discovery relating to what Plaintiffs believe to be the two essential questions of this case:  
25  
26

1 (1) Whether the WAP is an “employee pension benefit plan” subject to ERISA<sup>1</sup>, and (2) if  
2 so, whether the WAP is a “top hat” plan exempt from certain ERISA requirements.

3 Without waiver of additional topics of discovery, at this time Defendants plan to  
4 take discovery relating to (1) Plaintiffs’ employment history at RBC, including their  
5 participation in the WAP and their knowledge thereof; (2) Plaintiffs’ negotiations (if any)  
6 with Defendants or other financial services companies upon their arrival to, and departure  
7 from, RBC; and (3) Plaintiffs’ alleged damages.

8 The Parties do not believe that discovery should be conducted in phases.

9 **C. Electronically Stored Information**

10 Although certain information relating to WAP administration, participation, and  
11 eligibility is stored electronically, at this time the Parties do not anticipate any particular  
12 issues regarding the disclosure, discovery, or preservation of electronically stored  
13 information.

14 **D. Privilege Issues**

15 At this time the Parties do not anticipate any unusual issues relating to the attorney-  
16 client privilege or work product doctrine.

17 The Parties agree that the disclosure of attorney-client privileged communications  
18 and/or work product doctrine-protected materials will not waive the protection of the  
19 attorney-client privilege or work product doctrine provided that (1) the disclosure is  
20 inadvertent, (2) the holder of the privilege or protection takes reasonable steps to prevent  
21 disclosure, and (3) the holder promptly takes reasonable steps to rectify the error. The  
22 Parties agree that documents that the producing party believes contain privileged or  
23 protected information that were inadvertently produced will be destroyed by the receiving

---

24 <sup>1</sup> Plaintiffs believe that the Fifth Circuit Court of Appeals’ determination that the WAP is an  
25 “employee pension benefit plan” within the meaning of ERISA has definitively resolved  
26 this question and that Defendants should be collaterally estopped from re-litigating this  
issue. *See Tolbert v. RBC Capital Markets Corp., et al.*, 758 F.3d 619 (5th Cir. 2014). At  
this time, Defendants intend to preserve their arguments with respect to this issue.

1 party or returned or sequestered under Fed. R. Civ. P. 26(b)(5)(B) until the claim of  
2 privilege or protection is resolved by the Court.

3 **E. Proposed Limitations on Discovery**

4 At this time, the Parties do not believe any changes in the limitations on discovery  
5 imposed under the Federal Rules of Civil Procedure or under the Western District of  
6 Washington Local Civil Rules are necessary.

7 **F. Need for any Discovery Related Orders**

8 The Parties anticipate filing a Stipulated Motion and [Proposed] Protective Order.  
9 The Stipulated Motion and [Proposed] Protective Order will be similar in form to the  
10 Western District of Washington Model Stipulated Protective Order. Per LCR 26(c)(2) the  
11 Parties will provide the Court with the Stipulated Motion and [Proposed] Protective Order  
12 that identifies in redline proposed departures from the Model Stipulated Protective Order.

13 **5. Local Civil Rule 26(f)(1)**

14 **A. Prompt Case Resolution**

15 The Parties will endeavor to shorten and simplify the case to the extent reasonably  
16 possible while protecting the legitimate interests of all Parties.

17 **B. Alternative Dispute Resolution**

18 The Parties have not yet determined if they will engage in some form of alternative  
19 dispute resolution. The Parties will not engage in the individualized trial program set forth  
20 in LCR 39.2.

21 **C. Related Cases**

22 There is no related case pending before this Court or in another jurisdiction.

23 **D. Discovery Management**

24 At this time the Parties do not believe the number or scope of depositions should be  
25 limited beyond the limitations in the Federal Rules of Civil Procedure. At this time, the  
26 Parties do not request a scheduling conference be held before a scheduling order is issued in

1 this case. At this time, the Parties do not request that the Court use an abbreviated pretrial  
2 order or issue any order than a Fed. R. Civ. P. 16(b) and LCR 16(b)(1) scheduling order.

3 **E. Anticipated Discovery Sought**

4 See Paragraph 4(B).

5 **F. Phasing Motions**

6 At this time the Parties do not believe any particular phasing of motions should be  
7 ordered.

8 **G. Preservation of Discoverable Information**

9 The Parties are preserving discoverable information.

10 **H. Privilege Issues**

11 See Paragraph 4(D).

12 **I. Model Protocol for Discovery of ESI**

13 See Paragraph 4(C).

14 At this time the Parties do not believe there is a need to adopt the Model Agreement  
15 Regarding Discovery of Electronically Stored Information in Civil Litigation.

16 **J. Alternatives to Model Protocol for Discovery of ESI**

17 As the Parties do not believe that electronically stored information will present  
18 unusual issues in this matter, the Parties have not agreed regarding protocols for the topics  
19 identified in LCR 26(f)(1)(J). Should electronically stored information become an issue in  
20 this case, the Parties will revisit the topics identified in LCR 26(f)(1)(J).

21 **6. Date by Which Discovery can be Completed / Proposed Dispositive Motion**  
22 **Deadline**

23 The Parties believe discovery can be completed by June 30, 2017.

24 The Parties propose that all dispositive motions, including motions for summary  
25 judgment, shall be filed on or before July 20, 2017, with briefs in opposition to such  
26 motions due no later than August 17, 2017, and all associated replies due no later than  
September 1, 2017.

1           **7. Bifurcation**

2           At this time the Parties do not believe this case should be bifurcated in any way.

3           **8. Pretrial Statements and Pretrial Order**

4           At this time the Parties do not believe the pretrial statements and pretrial order  
5 called for by LCR 16(e), (h), (i), and (k) and 16.1 should be dispensed with in whole or in  
6 part for the sake of economy. The Parties will revisit potential alterations to the  
7 requirements for pretrial statements and pretrial order for the sake of economy nearer to the  
8 trial date for this case.

9           **9. Individualized Trial Program and ADR**

10          At this time the Parties do not intend to utilize the Individualized Trial Program set  
11 forth in LCR 39.2. The Parties have not yet determined if they will engage in some form of  
12 alternative dispute resolution.

13          **10. Other Suggestions for Shortening or Simplifying the Case**

14          The Parties have no other suggestions for shortening or simplifying the case, but  
15 will endeavor to work to shorten and simplify the case to the extent reasonably possible  
16 while protecting the legitimate interests of all Parties.

17          **11. Date Case Will be Ready for Trial**

18          The Parties suggest a trial date of December 11, 2017.

19          **12. Whether the Trial will be Jury or Non-Jury**

20          Non-jury.

21          **13. Number of Trial Days**

22          The Parties anticipate that this case can be resolved in four trial days.

1                   **14. Trial Counsel Contact Information**

2                   **Counsel for Plaintiffs**

3                   Jeremy E. Roller  
4                   Elizabeth S. Weinstein  
5                   Yarmuth Wilsdon PLLC  
6                   1420 Fifth Avenue, Suite 1400  
7                   Seattle, WA 98101  
8                   Phone: 206.516.3800  
9                   Fax: 206.516.3888  
10                  Email: jroller@yarmuth.com  
11                  eweinstein@yarmuth.com

**Counsel for Defendants**

Sari M. Alamuddin  
Christopher J. Boran  
Matthew A. Russell  
Morgan, Lewis & Bockius LLP  
77 West Wacker Drive, Fifth Floor  
Chicago, IL 60601  
Phone: 312.324.1000  
Fax: 312.323.1001  
Email: Sari.alamuddin@morganlewis.com  
                    Christopher.boran@morganlewis.com  
                    Matthew.russell@morganlewis.com

Kevin J. Hamilton  
William B. Stafford  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000  
Email: KHamilton@perkinscoie.com  
                    WStafford@perkinscoie.com

15                  **15. Trial Counsel Commitments to be Considered in Setting Trial Date**

16                  None at this time. Counsel will promptly advise the Court of commitments that  
17                  arise that may conflict with the trial date.

18                  **16. Status of Service on Defendants**

19                  All Defendants have been served.

20                  **17. Scheduling Conference**

21                  The Parties do not request a scheduling conference before the Court enters a  
22                  scheduling order in this case.

23                  **18. Dates on Which Nongovernmental Corporate Parties Filed Corporate**  
24                  **Disclosure Statements**

25                  Defendants filed their Corporate Disclosure Statement (Dkt. No. 12) on September  
26                  12, 2016.

1 DATED: October 12, 2016

2  
3 **YARMUTH WILSDON PLLC**

4 By: /s/ Jeremy E. Roller

5 Jeremy E. Roller, WSBA No. 32021

6 Elizabeth S. Weinstein, WSBA No. 45763

7 1420 Fifth Avenue, Suite 1400

8 Seattle, WA 98101

9 Phone: 206.516.3800

10 Fax: 206.516.3888

11 Email: jroller@yarmuth.com

12 eweinstein@yarmuth.com

13 *Attorneys for Plaintiffs Marty Paul and*  
14 *Brian Buskirk*

**MORGAN, LEWIS & BOCKIUS LLP**

By: /s/ Sari M. Alamuddin

Sari M. Alamuddin, admitted *pro hac vice*

Christopher J. Boran, admitted *pro hac vice*

Matthew A. Russell, admitted *pro hac vice*

77 West Wacker Drive, Fifth Floor

Chicago, IL 60601

Phone: 312.324.1000

Fax: 312.323.1001

Email: Sari.alamuddin@morganlewis.com

Christopher.boran@morganlewis.com

Matthew.russell@morganlewis.com

**PERKINS COIE LLP**

By: /s/ Kevin J. Hamilton

Kevin J. Hamilton, WSBA No. 15648

William B. Stafford, WSBA No. 39849

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Phone: 206.359.8000

Fax: 206.359.9000

Email: KHamilton@perkinscoie.com

WStafford@perkinscoie.com

*Attorneys for Defendants RBC Capital*  
*Markets, LLC, Royal Bank of Canada, and*  
*Royal Bank of Canada US Wealth*  
*Accumulation Plan*



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date, I electronically filed the foregoing document with  
3 the Clerk of the Court using the CM/ECF system, which will send notification of such filing  
4 to the following:

5 **PERKINS COIE LLP**

6 Kevin J. Hamilton  
7 William B. Stafford  
8 1201 Third Avenue, Suite 4900  
9 Seattle, WA 98101-3099  
10 Email: KHamilton@perkinscoie.com  
11 WStafford@perkinscoie.com

12 **MORGAN, LEWIS & BOCKIUS LLP**

13 Sari M. Alamuddin, *pro hac vice*  
14 Christopher J. Boran, *pro hac vice*  
15 Matthew A. Russell, *pro hac vice*  
16 77 West Wacker Drive, Fifth Floor  
17 Chicago, IL 60601  
18 Email: Sari.alamuddin@morganlewis.com  
19 Christopher.boran@morganlewis.com  
20 Matthew.russell@morganlewis.com

21 *Attorneys for Defendants RBC Capital*  
22 *Markets, LLC, Royal Bank of Canada, and*  
23 *Royal Bank of Canada US Wealth*  
24 *Accumulation Plan*

25 I declare under penalty of perjury under the laws of the State of Washington that the  
26 foregoing is true and correct.

Dated: October 12, 2016 at Seattle, Washington.

22 s/Sue Stephens

23 Sue Stephens, Legal Assistant